

May 05, 2017

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ASC MACHINE TOOLS, INC., a  
Washington corporation,

Plaintiff,

v.

THE HANOVER AMERICAN  
INSURANCE COMPANY, a Delaware  
corporation,

Defendant.

No. 2:16-CV-0425-SMJ

**STIPULATED PROTECTIVE  
ORDER**

Before the Court, without oral argument, is the parties' Stipulated Motion for a Protective Order. **ECF No. 16**. Having reviewed the pleadings and file in this matter, the Court is fully informed and **GRANTS** the motion. Pursuant to FRCP 26(c) and the stipulation of the parties, the Court hereby enters the following Protective Order:

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted.

Accordingly, the parties have stipulated to the following Stipulated Protective

1 Order. ECF No. 16. This Order does not confer blanket protection on all  
2 disclosures or responses to discovery. The protection it affords from public  
3 disclosure and use extends only to the limited information or items that are  
4 entitled to confidential treatment under the applicable legal principles, and it does  
5 not presumptively entitle parties to file confidential information under seal.

6 2. “CONFIDENTIAL” MATERIAL

7 “Confidential” material shall include the following documents and tangible  
8 things produced or otherwise exchanged:

- 9 • Tax Returns;
- 10 • Business Models;
- 11 • Rate and Pricing Information;
- 12 • Customer or Marketing Information;
- 13 • Confidential Commercial Information; and
- 14 • Proprietary Information.

15 3. SCOPE

16 The protections conferred by this Order cover not only confidential material  
17 (as defined above), but also (1) any information copied or extracted from  
18 confidential material; (2) all copies, excerpts, summaries, or compilations of  
19 confidential material; and (3) any testimony, conversations, or presentations by  
20 parties or their counsel that might reveal confidential material. However, the

1 protections conferred by this Order do not cover information that is in the public  
2 domain or becomes part of the public domain through trial or otherwise.

3 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4 4.1 Basic Principles. A receiving party may use confidential material that  
5 is disclosed or produced by another party or by a non-party in connection with this  
6 case only for prosecuting, defending, or attempting to settle this litigation.

7 Confidential material may be disclosed only to the categories of persons and under  
8 the conditions described in this Order. Confidential material must be stored and  
9 maintained by a receiving party at a location and in a secure manner that ensures  
10 that access is limited to the persons authorized under this Order.

11 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
12 otherwise ordered by the court or permitted in writing by the designating party, a  
13 receiving party may disclose any confidential material only to:

14 (a) the receiving party’s counsel of record in this action, as well as  
15 employees of counsel to whom it is reasonably necessary to disclose the  
16 information for this litigation;

17 (b) the officers, directors, and employees (including in house  
18 counsel) of the receiving party to whom disclosure is reasonably necessary for this  
19 litigation, unless the parties agree that a particular document or material produced  
20 is for “Attorney’s Eyes Only” and is so designated;

1 (c) experts and consultants to whom disclosure is reasonably  
2 necessary for this litigation and who have signed the “Acknowledgment and  
3 Agreement to Be Bound” (Exhibit A);

4 (d) the court, court personnel, and court reporters and their staff;

5 (e) copy or imaging services retained by counsel to assist in the  
6 duplication of confidential material, provided that counsel for the party retaining  
7 the copy or imaging service instructs the service not to disclose any confidential  
8 material to third parties and to immediately return all originals and copies of any  
9 confidential material;

10 (f) during their depositions, witnesses in the action to whom  
11 disclosure is reasonably necessary and who have signed the “Acknowledgment  
12 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the  
13 designating party or ordered by the court. Pages of transcribed deposition  
14 testimony or exhibits to depositions that reveal confidential material must be  
15 separately bound by the court reporter and may not be disclosed to anyone except  
16 as permitted under this Order;

17 (g) the author or recipient of a document containing the information  
18 or a custodian or other person who otherwise possessed or knew the information.

19 4.3 Filing Confidential Material. Before filing confidential material or  
20 discussing or referencing such material in court filings, the filing party shall

1 confer with the designating party to determine whether the designating party will  
2 remove the confidential designation, whether the document can be redacted, or  
3 whether a motion to seal or stipulation and proposed order is warranted.

4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Exercise of Restraint and Care in Designating Material for  
6 Protection. Each party or non-party that designates information or items for  
7 protection under this Order must take care to limit any such designation to specific  
8 material that qualifies under the appropriate standards. The designating party must  
9 designate for protection only those parts of material, documents, items, or oral or  
10 written communications that qualify, so that other portions of the material,  
11 documents, items, or communications for which protection is not warranted are  
12 not swept unjustifiably within the ambit of this Order.

13 Mass, indiscriminate, or routinized designations are prohibited.  
14 Designations that are shown to be clearly unjustified or that have been made for  
15 an improper purpose (e.g., to unnecessarily encumber or delay the case  
16 development process or to impose unnecessary expenses and burdens on other  
17 parties) expose the designating party to sanctions.

18 If it comes to a designating party's attention that information or items that it  
19 designated for protection do not qualify for protection, the designating party must  
20 promptly notify all other parties that it is withdrawing the mistaken designation.

1           5.2   Manner and Timing of Designations. Except as otherwise provided in  
2 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
3 stipulated or ordered, disclosure of discovery material that qualifies for protection  
4 under this Order must be clearly designated as such before or when the material is  
5 disclosed or produced.

6                   (a) Information in documentary form: (e.g., paper or electronic  
7 documents and deposition exhibits, but excluding transcripts of depositions or  
8 other pretrial or trial proceedings), the designating party must affix the word  
9 “CONFIDENTIAL” to each page that contains confidential material. If only a  
10 portion or portions of the material on a page qualifies for protection, the producing  
11 party also must clearly identify the protected portion(s) (e.g., by making  
12 appropriate markings in the margins).

13                   (b) Testimony given in deposition or in other pretrial or trial  
14 proceedings: the parties must identify on the record, during the deposition,  
15 hearing, or other proceeding, all protected testimony, without prejudice to their  
16 right to so designate other testimony after reviewing the transcript. Any party or  
17 non-party may, within fifteen business days after receiving a deposition transcript,  
18 designate portions of the transcript, or exhibits thereto, as confidential.

19                   (c) Other tangible items: the producing party must affix in a  
20 prominent place on the exterior of the container or containers in which the

1 information or item is stored the word “CONFIDENTIAL.” If only a portion or  
2 portions of the information or item warrant protection, the producing party, to the  
3 extent practicable, shall identify the protected portion(s).

4       5.3   Inadvertent Failures to Designate. If timely corrected, an inadvertent  
5 failure to designate qualified information or items does not, standing alone, waive  
6 the designating party’s right to secure protection under this Order for such  
7 material. Upon timely correction of a designation, the receiving party must make  
8 reasonable efforts to ensure that the material is treated in accordance with the  
9 provisions of this Order.

## 10   6.   CHALLENGING CONFIDENTIALITY DESIGNATIONS

11       6.1   Timing of Challenges. Any party or non-party may challenge a  
12 designation of confidentiality at any time. Unless a prompt challenge to a  
13 designating party’s confidentiality designation is necessary to avoid foreseeable,  
14 substantial unfairness, unnecessary economic burdens, or a significant disruption  
15 or delay of the litigation, a party does not waive its right to challenge a  
16 confidentiality designation by electing not to mount a challenge promptly after the  
17 original designation is disclosed.

18       6.2   Meet and Confer. The parties must make every attempt to resolve any  
19 dispute regarding confidential designations without court involvement. Any  
20 motion regarding confidential designations or for a protective order must include a

1 certification, in the motion or in a declaration or affidavit, that the movant has  
2 engaged in a good faith meet and confer conference with other affected parties in  
3 an effort to resolve the dispute without court action. The certification must list the  
4 date, manner, and participants to the conference. A good faith effort to confer  
5 requires a face-to-face meeting or a telephone conference.

6       6.3   Judicial Intervention. If the parties cannot resolve a challenge without  
7 court intervention, the designating party may file and serve a motion to retain  
8 confidentiality under Local Civil Rule 7.1. The burden of persuasion in any such  
9 motion shall be on the designating party. Frivolous challenges, and those made for  
10 an improper purpose (e.g., to harass or impose unnecessary expenses and burdens  
11 on other parties) may expose the challenging party to sanctions. All parties shall  
12 continue to maintain the material in question as confidential until the court rules  
13 on the challenge.

14 7.    PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
15       IN OTHER LITIGATION

16       If a party is served with a subpoena or a court order issued in other  
17 litigation that compels disclosure of any information or items designated in this  
18 action as “CONFIDENTIAL,” that party must:

19               (a) promptly notify the designating party in writing and include a  
20 copy of the subpoena or court order;



1 (b) promptly notify in writing the party who caused the subpoena or  
2 order to issue in the other litigation that some or all of the material covered by the  
3 subpoena or order is subject to this Order. Such notification shall include a copy  
4 of this Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be  
6 pursued by the designating party whose confidential material may be affected.

7 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

8 If a receiving party learns that, by inadvertence or otherwise, it has  
9 disclosed confidential material to any person or in any circumstance not  
10 authorized under this Order, the receiving party must immediately (a) notify in  
11 writing the designating party of the unauthorized disclosures, (b) use its best  
12 efforts to retrieve all unauthorized copies of the protected material, (c) inform the  
13 person or persons to whom unauthorized disclosures were made of all the terms of  
14 this Order, and (d) request that such person or persons execute the  
15 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit

16 A.

17 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
18 PROTECTED MATERIAL

19 When a producing party gives notice to receiving parties that certain  
20 inadvertently produced material is subject to a claim of privilege or other

1 protection, the obligations of the receiving parties are those set forth in Federal  
2 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
3 whatever procedure may be established in an e-discovery order or agreement that  
4 provides for production without prior privilege review. Parties shall confer on an  
5 appropriate non-waiver order under Fed. R. Evid. 502.

6 10. NON TERMINATION AND RETURN OF DOCUMENTS

7 Within 60 days after the termination of this action, including all appeals,  
8 each receiving party must return all confidential material to the producing party,  
9 including all copies, extracts and summaries thereof. Alternatively, the parties  
10 may agree upon appropriate methods of destruction.


11 Notwithstanding this provision, counsel are entitled to retain one archival  
12 copy of all documents filed with the court, trial, deposition, and hearing  
13 transcripts, correspondence, deposition and trial exhibits, expert reports, attorney  
14 work product, and consultant and expert work product, even if such materials  
15 contain confidential material.

16 The confidentiality obligations imposed by this Order shall remain in effect  
17 until a designating party agrees otherwise in writing or a court orders otherwise.

18 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and  
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1 provide copies to all counsel.

2 **DATED** this 5th day of May 2017.

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4 SALVADOR MENDOZA, JR.  
5 United States District Judge  
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
4 [print or type full address], declare under penalty of perjury that I have read in its  
5 entirety and understand the Stipulated Protective Order that was issued by the  
6 United States District Court for the Eastern District of Washington on \_\_\_\_\_  
7 in the case of ASC Machine Tools, Inc. v. Hanover American Ins. Co., Case No.  
8 2:16-cv-0425 SMJ. I agree to comply with and to be bound by all the terms of this  
9 Stipulated Protective Order and I understand and acknowledge that failure to so  
10 comply could expose me to sanctions and punishment in the nature of contempt. I  
11 solemnly promise that I will not disclose in any manner any information or item  
12 that is subject to this Stipulated Protective Order to any person or entity except in  
13 strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District  
15 Court for the Eastern District of Washington for the purpose of enforcing the  
16 terms of this Stipulated Protective Order, even if such enforcement proceedings  
17 occur after termination of this action.

18 Date: \_\_\_\_\_

19 City and State where sworn and signed: \_\_\_\_\_

20 Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_